IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

WP(C).No. 36028 of 2004(L)

PETITIONER:

K.P.VARKEY, S/O.PAILY,
VADAKKEKKARIKKATTIL HOUSE, MATTAKUZHI KARA,
KOKKAPPILLY P.O., THIRUVANIYOOR VILLAGE,
ERNAKULAM DISTRICT.

BY ADV. SRI.SAJEEV KUMAR K.GOPAL
SRI.BINOY VASUDEVAN

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY THE
CHIEF SECRETARY, GOVT. SECRETARIATE,
THIRUVANANTHAPURAM.

2. THE CIRCLE INSPECTOR OF POLICE,
PUTHENCRUZ POLICE STATION,
ERNAKULAM DISTRICT.

3. THE SUB INSPECTOR OF POLICE,
PUTHENCRUZ POLICE STATION.

4. THE DEPUTY SUPERINTENDENT OF POLICE,
MUVATTUPUZHA.

5. SUPERINTENDENT OF POLICE,
ERNAKULAM.

6. THE SUPERINTENDENT OF POLICE,
SPECIAL CRIME BRANCH/CBI, CHENNAI.

R6 BY ADV. SRI.S.SREEKUMAR, SC FOR CBI

R1 TO R5 GOVERNMENT PLEADER SRI PUZHAKKARA MUHAMMED
BY D.G.P. SRI P.G. THAMPI.

THIS WRIT PETITION (CIVIL) HAVING COME UUP FOR ADMISISON ON 27-10-2006, THE COURT ON 6-12-2006, DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

W.P.C.NO.36028 OF 2004

DATED THIS THE 6th DAY OF DECEMBER 2006

JUDGMENT

The petitioner who is the father of the deceased Noble Varghese @ Noby, aged 23, who was found dead and lying in the well situated in the house compound of the neighbour of the petitioner, i.e.Babu, S/o.George on 15-5-2004 in the middle of the night and whose death has been written off as accidental by the police, has sought for further investigation into the matter by the C.B.I. It is stated that the deceased son of the petitioner had gone out of the house at about 10 p.m. with one Santhosh and at about 4.30 a.m.the petitioner woke up hearing the barking of the dog and the commotion and came to know that his son was found dead. The role of Babu, owner of the compound who is the proprietor of Nedumparambil Bankers, is strongly suspected. According to the petitioner, the above Babu who is a rich person has influenced the police. The petitioner is a retired driver of the K.S.R.T.C. Detailed questioning of the friends of the deceased including Santhosh is necessary to unravel the truth. According to the petitioner, the F.I.S.by Babu contained discrepancies and contradictions. According to the petitioner, the chappals found near the well were of different size.

2. As directed by this Court, the Sub Inspector, who investigated the case has filed a statement. It is stated therein that as per the F.I.S. at night at about 10.30, the wife of the informant Babu George, heard the sound of somebody walking on the roof top of his house and the cracking sound of tiles. The lady raised a hue and cry and the informant and his wife heard the sound of somebody jumping from the roof top and running away. They alerted the neighbours and on a combing operation by the local people in the neighbourhood, a pair of chappals lying near the well situated at about 5 metres away from the staircase was found and the nylon net covering the mouth of the well was found torn. Fire force was called and the person lying inside the well was lifted up and was found dead. The postmortem conducted at the Medical College, Allappuzha indicated that the deceased had consumed alcohol. There were 12 anti-mortem injuries which were just abrasions and one lacerated wound at the back of left foot. The finding of the Forensic Surgeon is that the deceased died due to drowning. 33 witnesses have been questioned. A report has been filed in this regard before the Sub-Divisional Magistrate.

3. The Case Diary was produced and the counsel was heard.

4. On a perusal of the Case Diary, I find that no witnesses have

mentioned anything suspicious about the conduct of Babu Goerge, the first informant. Further the mahazar showed that the height of the well is only 50 cms. and the same is situated 5.8 metres from the house, on its back side. The evidence is that the chappals were found near the well and that the same was a pair. The investigation has revealed nothing incriminating with respect to the role of the first informant. There is no evidence as to any animosity entertained by anybody against the deceased. The statement of the witnesses who are the friends and the elder brother of the deceased show that the deceased was drunk to the gills when he was going out of the house after 10 p.m. I find that the investigation by the C.B.I.is not at all warranted in the circumstances.

All the same, the Superintendent of Police, Ernakulam is directed to see that the investigation is verified and if necessary the same is to be further investigated. The same shall be done at the earliest. The writ petition is disposed of accordingly.

Sd/-

K.R.UDAYABHANU, JUDGE

ks/- **TRUE COPY**

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